Louisiana itself, the use of river banks is limited to that dictated by nothing less than a reasonable necessity. *Bass* v. *State,* 34 La. Ann. 494, which the United States Supreme Court refused to follow in *Hollingsworth* v. *Parish of Tensas,* 17 Fed. 109; *Hunter* v. *Moore,* 44 Ark. 184; *O'Fallon* v. *Daggett,* 4 Mo. 343. Although the latter case has frequently been invoked to support the argument for a liberal doctrine in favor of the public, the rule therein established is restrictive, and the court in *Smith* v. *City of St. Louis,* 21 Mo. 36, subsequent to a discussion of *O'Fallon* v. *Daggett,* says, "We are not aware that the Spanish law, in relation to riparian grants on the Mississippi, in Louisiana, has ever been considered as obtaining in Missouri."

PRIZE LAW—ENEMY GOODS—TRANSFER IN TRANSITU.—A cargo of tea consigned to a German firm at Bremen was shipped from a Chinese port in July, 1914, on a German vessel. Upon learning of the outbreak of war, the vessel took refuge on August 7, 1914, in the neutral port of Padung in Sumatra, where the cargo was unshipped and stored. In 1916 the tea was sold to a Dutch firm in Amsterdam. Fresh bills of lading were made out and the tea was reshipped on a Dutch steamship for London. It was discharged and warehoused at the port of London, where it was seized as prize. The tea was claimed as neutral property. *Held,* that the transfer *in transitu* was ineffective to defeat the belligerent's right of capture. *The Bawean* (1917), 14 Asp. M. C. 255.

The rule was well established, at least as early as the time of Lord STOWELL, that risk of capture once incurred cannot be divested by transfer *in transitu.* See *The Vrow Margaretha* (1799), 1 C. Rob. 366; *The Packet De Bilboa* (1799), 2 C. Rob. 133; *The Carl Walter* (1802), 4 C. Rob. 207; *The Jan Frederick* (1804), 5 C. Rob. 128. The rule has been criticized as peculiarly favorable to sea power. It has always been unpopular among neutral traders, among whom there has been a good deal of misapprehension with respect to its real significance. It will hardly be relaxed, however, while war and the right of capture are recognized. See *The Southfield* (1915), 13 Asp. M. C. 150; *The Bawean, supra.* Compare *The United States* (1916), 13 Asp. M. C. 568. The *raison d'être* for the rule was cogently stated by Mr. Justice STORY as follows: "Such contracts, however valid in time of peace, are considered, if made in war or in contemplation of war, as infringements of belligerent rights, and calculated to introduce the grossest frauds. In fact, if they could prevail, not a single bale of enemy's goods would ever be found upon the sea." *The Ship Ann Green* (1812), 1 Gall. 274, 291.

PRIZE LAW—NEUTRAL OR ENEMY CHARACTER OF MERCHANT SHIPS.—Article 57 of the Declaration of London provided that the neutral or enemy character of a merchant ship should be determined by the flag which the vessel is entitled to fly. It was urged by the drafting committee, in its report to the Naval Conference, that this test should be relied on exclusively and all considerations connected with the personal status of the owner discarded. The futility of such artificial tests and the ruthless elimination of technicality from prize law are well illustrated in two of the more recent English prize cases. The *Proton* was registered as a Greek ship and entitled to fly the Greek flag.

In April, 1915, one Kouremetis, a domiciled Greek and landlubber of practically no means, appeared in Athens with his pockets full of money. He purchased the *Proton* and engaged in the Ottoman trade. The vessel was captured while loading a cargo of oats at a Turkish port. Ship and cargo were claimed as neutral property, but Kouremetis did not offer himself for examination. The Court found that he did not buy the vessel for himself, but only figured as owner in order that she might continue to fly the Greek flag, and that in view of his German associations he must have bought with German money for the German Government, the only party likely to be interested in laying out so much money on so dubious a venture. It was contended that the flag was conclusive as to character. *Held,* on appeal, by the Judicial Committee of the Privy Council, that the Prize Court was not bound by the Order in Council adopting the Declaration of London, that the character of the *Proton* should be determined by the entire body of relevant circumstances, and that the finding that Kouremetis was not the true owner was warranted by the evidence. Accordingly, the claimant's appeal failed. *The Proton* (1918), 87 L. J. P. C. 114, 14 Asp. M. C. 268.

The *Hamborn* wase registered in Holland and was flying the Dutch flag. At the time of capture it was running under a time charter with an American firm on a voyage from New York to Cuba. The vessel was owned by the Hamborn Shipping Company, a limited company registered in Holland. The entire share capital of this company was held by two companies which were registered in Holland but were controlled by German directors resident in Germany. The company was managed by two German subjects resident in Holland. The centre and effective control of its business was in Germany. *Held,* that the *Hamborn* was a German vessel and should be condemned as prize. *The Hamborn* (1917), 87 L. J. P. 64, 14 Asp. M. C. 204.

In the first case, the rule of the Declaration of London had been adopted by Order in Council, but the prize court refused to be bound by it. The Crown cannot, by Order in Council, prescribe or alter the law to be administered by a court of prize. *The Zamora* (1916), 85 L. J. P. 89, 94, 95. In the second case, the Order in Council had been revoked at the date of capture. In neither case, therefore, was the test recommended by the Naval Conference applied. Nor is this test likely to be applied by any state which is obliged to rely upon sea power. While the flag is binding against the owner of the captured vessel (*The Tommi; The Rothersand* (1914), 84 L. J. P. 35), English and American courts do not treat it as binding against the captor. Lord STOWELL, in *The Fortuna* (1811), 1 Dods. 87. Where the vessel is owned by a company it is hardly to be expected that its character will be determined exclusively by the location of the company's registered office. See *Daimler Co.* v. *Continental Tyre and Rubber Co.* (1916), 85 L. J. K. B. 1333. Prize courts are not bound by technicalities. See *The Indian Chief* (1800), 3 C. Rob. 12; *The Fortuna* (1817), 2 Wh. 161 and 3 Wh. 236; *The Ocean Bride* (1854), 2 Spinks 8; *The St. Tudno* (1916), 85 L. J. P. 1. As was said in the case of *The Hamborn, supra,* "It is a settled rule of prize law, based on the principles upon which Courts of Prize act, that they will penetrate through and beyond forms and technicalities to the facts and realities.

This rule, when applied to questions of the ownership of vessels, means that the Court is not bound to determine the neutral or enemy character of a vessel according to the flag she is flying, or may be entitled to fly, at the time of capture. The owners are bound by the flag which they have chosen to adopt, but captors as against them are not so bound. It has been said that 'it is no inconsiderable part of the ordinary occupation of a Prize Court to pull off the mask and exhibit the vessel in her true character'."

SALES — CONDITIONAL SALES — RIGHT OF VENDOR TO RESERVE TITLE AND RIGHT TO SUE FOR PRICE.—Plaintiff was a purchaser at an execution sale of goods levied on as those of a purchaser under a conditional sale providing for the right to retake and for retention of title by the vendor. The vendor had sued out judgment against the vendee and later assigned all his rights to the defendant. *Held,* plaintiff did not acquire title as against the defendants, assignees of the vendor. *Wiedenbeck-Doblin Co.* v. *Anderson* (Wis., 1919), 169 N. W. 615.

The conflict of authority on this subject is brought out by a comparison of the principal case with the case of *Young* v. *Phillips,* 169 N. W. 822, decided by the Supreme Court of Michigan, December 27, 1918, wherein the court on the authority of *Atkinson* v. *Japink,* 186 Mich. 335, without a statement of facts, held a provision for retention of title in the vendor with a right to sue for the price would be construed as intending merely to give the vendor a lien for security and result in an absolute sale, the right to retain title and sue for the price being inconsistent. In effect, the decisions are in conflict. In Wisconsin, a seller may retain title to the goods and at the same time sue for the price. In Michigan, if the seller attempts to secure himself by retaining title and at the same time reserve the right to sue for the price, the courts will declare the remedies inconsistent, the sale absolute and the seller relegated to a lien for his security. In neither case does the decision appear to rest on a statute. Commonly a buyer's liability for the purchase price is contingent on the passage of title. But the parties by contract may base the liability on possession of the goods and right to acquire title in which case the seller may have his action for the price with the buyer's right to possession as the *quid pro quo. White* v. *Solomon,* 164 Mass. 516; *Burnly* v. *Tufts,* 66 Miss. 48; *Tufts* v. *Griffin,* 107 N. C. 47. In *J. M. Arthur and Company* v. *Blackman,* 63 Fed. 536 and *Randall* v. *Stone,* 77 Ga. 501, the court found the destruction of the goods before payment and the consequent inability to pass title relieved the vendee of liability on the ground of failure of consideration. Conceivably, parties might contract for the sale of goods, the buyer's liability to be contingent on his acquisition of possession and right to acquire title. If from a reasonable construction of the contract, this intention appears, it hardly lies with the court to gainsay it. If by "inconsistent" the Michigan court means merely that it is unreasonable, it lays itself open to the objection of re-writing the contract. If, on the other hand, its meaning is to hold that retention of title and a right to sue for the price cannot legally stand together it is tantamount to holding that the only consideration the law recognizes for a buyer's agreement to pay is